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DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

7 CFR Part 3419

RIN 0524-AA68

Matching Funds Requirements for Agricultural Research and Extension Capacity Funds at 1890 Land-Grant Institutions, including Central State University, Tuskegee University, and West Virginia State University, and at 1862 Land-Grant Institutions in Insular areas

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends National Institute of Food and Agriculture (NIFA) regulations for the purpose of implementing the statutory amendments applicable to the National Institute of Food and Agriculture's (NIFA) matching requirements for Federal agricultural research and extension capacity (formula) funds for 1890 land-grant institutions (LGUs), including Central State University, Tuskegee University, and West Virginia State University, and 1862 land-grant institutions in insular areas, and to remove the term "qualifying educational activities."

These matching requirements were amended by the Farm Security and Rural Investment Act; the Food, Conservation, and Energy Act of 2008; and the Agricultural Act of 2014.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Maggie Ewell, Senior Policy Advisor, 202-401-0222.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

The National Institute of Food and Agriculture (NIFA) amends part 3419 of Title 7, subtitle B, chapter XXXIV of the Code of Federal Regulations which implements the matching requirements provided under section 1449 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) for agricultural research and extension capacity (formula) funds authorized for the 1890 land-grant institutions, including Central State University, Tuskegee University, and West Virginia State University and 1862 land-grant institutions in insular areas. This revision is required due to the statutory amendments of sections 7212 of the Farm Security and Rural Investment Act of 2002 (FSRIA); section 7127 of the Food, Conservation, and Energy Act of 2008; and section 7129 of the Agricultural Act of 2014. Additionally, NIFA makes these changes to the Definitions and Use of Matching Funds sections to provide clarity on allowable uses of matching funds.

Response to Comments on the Proposed Rule and Revisions Included in Final Rule:

On November 13, 2017, NIFA published in the Federal Register a Notice of Proposed Rulemaking entitled "Matching Funds Requirements for Agricultural Research and Extension Capacity Funds at 1890 Land-Grant Institutions and 1862 Land-Grant Institutions in Insular Areas" (82 FR 52250) with the same purpose as above. The public had 60 days to comment, with the comment period closing January 12, 2018. NIFA received only one comment in response to the Notice of Proposed Rulemaking and this comment addressed issues that are outside the scope of this rule. The commenter discussed the inhumane treatment of farm animals in general. Because this comment is outside the scope of this rule, no change will be made to the language of the revision based on this comment.

Summary of Changes in Final Rule:

Section 3419.1 Definitions

The definition of an eligible institution is updated to include West Virginia State University (formerly West Virginia State College) and Central State University. Section 753 of the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Pub. L. 107-76) restored 1890 land-grant institution status to West Virginia State College. In 2004, the West Virginia Legislature approved West Virginia State College's transition to University status.

Central State University was recognized as an 1890 land-grant institution under section 7129 of the Agricultural Act of 2014. In 2014, NIFA re-branded its formula grant programs as "capacity grants." Therefore, the definition of formula funds is changed to reflect this terminology, capacity funds, and the words "by formula" are inserted to clarify that capacity funds are provided by formula to eligible institutions.

The term and definition for qualifying educational activities is removed due to the fact that this term has caused confusion regarding what constitutes an allowable qualifying educational activity. NIFA follows the authorized uses of funds in NARETPA, codified at 7 U.S.C. 3221 and 3222, for extension and research programs. Research funds are for conducting agricultural research, printing, disseminating the results of research, administration, planning and direction, purchase and rental of land, and the construction, acquisition, alteration, or repair of buildings necessary for conducting agricultural research. Extension funds are for the expenses of conducting extension programs and activities. 7 U.S.C. 3221(e) expressly prohibits extension funds from being spent on college course teaching or lectures in college.

NARETPA also contains definitions that explain the difference between education in conjunction with extension programs and education and teaching. Extension education is defined as

"informal" while teaching and education is defined as "formal classroom instruction," which is expressly prohibited under 7 U.S.C. 3221(e).

Because the authorized uses related to education expenses are clearly outlined in NARETPA and in 7 U.S.C. 3221 and 3222, NIFA does not see the value in including the term "qualifying educational activity" as a term in regulation and, further, wants to ensure there is no conflict between its regulatory authorizations and the law. Therefore, NIFA removes the term "qualifying educational activity" and will allow only informal educational activities, as authorized by statute.

Section 3419.2 Matching funds requirements

Revisions to this section are required due to statutory amendments of sections 7212 of FSRIA; section 7127 of the Food, Conservation, and Energy Act of 2008; and section 7129 of the Agricultural Act of 2014. The information regarding Fiscal Years 2000, 2001, and 2002 are removed as they are outdated and no longer applicable. NIFA replaces this text with the matching requirements for 1862 land-grant institutions in insular areas for the Smith-Lever 3(b) and (c) program (7 U.S.C. 343(e)(4)(A)) and the Hatch Act program (7 U.S.C. 361c(d)(4)(A)), which state that insular areas will provide matching funds from non-Federal sources in an amount equal to not less than 50 percent of the formula funds distributed by NIFA to each of the 1862 land-grant

institutions in insular areas, respectively. NIFA replaces existing text with the matching requirement to the Evans Allen/Section 1445 fund program (7 U.S.C. 3222d) and Extension/Section 1444 fund programs (7 U.S.C. 3221) which state that the State will provide equal matching funds from non-Federal sources.

Section 3419.3 Limited Waiver Authority

The section entitled, "Determination of non-Federal sources of funds," § 3419.3, is removed, because it reiterated a statutory requirement to submit, in the year 1999, a report on non-Federal funds used as match to be submitted. There is no further statutory requirement or authority to submit reports on the sources of non-Federal funds. Section 3419.4 Limited Waiver Authority is re-designated as § 3419.3 and modified to include the provisions of 7 U.S.C 3222d(d): authorization of a 50% waiver of matching funds authority for 1890 land-grant institutions. Additionally, § 3419.3 includes the authority to waive up to 100% of the required match for 1862 land-grant institutions in insular areas that is present in 7 U.S.C. 343(e) (4) (B) .

NIFA also adds to this section a description of the criteria a land-grant institution must demonstrate in order to be eligible for a waiver. The three criteria are: Impacts from natural disaster, flood, fire, tornado, hurricane, or drought; State

and/or Institution facing a financial crisis; or lack of matching funds after demonstrating a good faith effort to obtain funds.

Section 3419.4 Application for waivers for both 1890 land-grant institutions and 1862 land-grant institutions in insular areas

NIFA adds § 3419.4 to outline how 1890 land-grant institutions and 1862 land-grant institutions in insular areas may request a matching waiver. To request a waiver, the president of the institution must submit in writing a request for a waiver of the matching requirements. The request must include the name of the eligible institution, the type of capacity funds, which would include Section 1444 Extension, Section 1445 Research; Smith-Lever; or Hatch Act; the fiscal year of the match; and the basis of the request, *i.e.*, one or more of the criteria identified in 3419.3. Requests for waivers may be submitted with the application for funds or at any time during the period of performance of the award. Additionally, NIFA includes a requirement for current supporting documentation, where current is defined as within the past two years from the date of the letter requesting the waiver. It is critical that NIFA base its decisions for matching waivers on the current state of affairs within the State and institution. Using older data does not provide adequate rationale for NIFA to waive the statutorily required match for capacity programs.

Section 3419.5 Certification of matching funds

The only change in this section is changing the word "formula" to "capacity," consistent with the current terminology used by NIFA.

Section 3419.6 Use of matching funds

NIFA includes minor technical changes to this section: use of the term "capacity" in place of "formula" and "must" in place of "shall." These technical changes have no impact on the requirements from the existing to the proposed regulation.

Additionally, NIFA adds clarifying language that matching funds must be used for the same purpose as Federal dollars as well as a specific prohibition on the use of tuition dollars and student fees as match.

The intent of the rule is to clarify two requirements. First, the amended rule clarifies that matching funds must be used by an eligible institution for the same purpose as Federal award dollars: agricultural research and extension activities that have been approved in the plan of work. Second, the amended rule removes the end phrase: "or for approved qualifying educational activities." As discussed in § 3419.1 Definitions, the use of the phrase "qualifying educational activities" has caused confusion regarding what constitutes an allowable qualifying educational activity. NIFA supports the position, as required under 2 CFR 200.306, that all matching funds must be

necessary and reasonable for accomplishment of project or program objectives. In other words, to be allowable as a match, the costs must be allowable under the Federal award. This principle applies to matching funds 1890 land-grant institutions receive for Research and Extension programs, as well as the funds received by 1862 land-grant institutions in insular areas for Smith-Lever and Hatch programs.

NIFA follows the authorized uses of funds in the authorizing statutes for determining what is allowable under the Federal award. For 1862 land-grant institutions in insular areas, this is the authorized uses under 7 U.S.C. 343 for Smith-Lever programs and 7 U.S.C. 361a for Hatch Act programs.

For 1890 Extension and Research programs, NIFA follows the authorizations included in NARETPA, codified at 7 U.S.C. 3221 and 3222. Research funds are for conducting agricultural research; printing; disseminating the results of research, administration, planning and direction; purchase and rental of land; and the construction, acquisition, alteration, or repair of buildings necessary for conducting agricultural research. Extension funds are for the expenses of conduction extension programs and activities. 7 U.S.C. 3221(e) expressly prohibits extension funds from being spent on college course teaching or lectures in college.

NARETPA also contains definitions that explain the difference between education in conjunction with extension programs versus education and teaching. Extension education is defined as "informal" while teaching and education is defined as "formal classroom instruction," which is expressly prohibited under 7 U.S.C. 3221(e).

Because the authorized uses related to education expenses are clearly outlined in NARETPA and 7 U.S.C. 3221 and 3222, NIFA does not see value in including the term "qualifying educational activity" as a term in regulation and further, wants to ensure there is no conflict between its regulatory authorizations and the law. Therefore, NIFA removes the term "qualifying educational activity;" however, the removal is intended to prohibit expenditures related to formal education activities. NIFA will allow only informal education activities, as authorized by statute.

Under 7 U.S.C. 3221(a)(3), funds appropriated for extension must be used for the expenses of conducting extension programs and activities, and for contributing to the retirement of employees subject to the provisions of 7 U.S.C. 331. 7 U.S.C. 3222(e) expressly prohibits extension funds from being spent on college course teaching and lectures in college. Section 1404(7) of NARETPA defines the term extension to mean informal education programs conducted in the States in cooperation with the

Department of Education. Therefore, NIFA has determined that the current authorizations allow for informal education programs to be conducted with extension funding, but not for formal classroom instruction.

7 U.S.C. 3222(a)(3) states that: "research funding must be used for the expenses of conducting agricultural research, printing, disseminating the results of such research, contributing to the retirement of employees subject to the provisions of 7 U.S.C. 331 of this title, administrative planning and direction, and purchase and rental of land and the construction, acquisition, alteration, or repair of buildings necessary for conducting agricultural research."

Because the authorizing statutes so clearly identify authorized uses and prohibitions, NIFA believes that no further explanation or inclusion of qualifying educational activities is needed in this regulation.

Finally, Section 1473 of NARETPA, 7 U.S.C. 3319, prohibits grantee institutions from using capacity funds for tuition remission. Therefore, NIFA revises this section to clarify that this prohibition also applies to student fees, as they are related to tuition. Further 7 U.S.C. 3221 and 3222 do not include tuition or student fees as authorized uses of funds. As provided in 7 U.S.C. 3221(e) and 3222(d), no portion of the funds provided to an 1890 institution for extension and research

shall be applied, directly or indirectly, to any purpose other than those specified in the authorizing statutes. Therefore, NIFA clarifies that tuition dollars and student fees are not to be used as matching funds.

Section 3419.7 Reporting of matching funds

This revision adds a section on reporting of matching funds to clarify an existing requirement that 1890 land-grant institutions and 1862 land-grant institutions in insular areas report all capacity funds expended on an annual basis using Standard Form (SF) 425, in accordance with 7 CFR part 3430. This ensures that the information on matching funds is reported to NIFA.

Section 3419.8 Redistribution of funds

This revision removes the first sentence of the existing provision as the timing of reapportionment may vary. Removing this sentence does not change the statutory requirements for reapportionment. The only significance of the deletion is to remove the July 1 date for action.

Additionally, one other technical correction changes "shall" to "must," consistent with the plain English provisions relating to rulemaking.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all

costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying the costs and benefits of simplifying and harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13771

This final rule is not expected to be an EO 13771 regulatory action because this rule is not significant under EO 12866.

Regulatory Flexibility Act

This final rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (5 USC 601-612). The Director of the NIFA certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect institutions of higher education receiving Federal funds under this program. The U.S. Small Business Administration Size Standards define institutions as "small entities" if they are for-profit or nonprofit institutions with total annual revenue

below \$5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. The rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Catalogue of Federal Domestic Assistance

The programs affected by this final rule are listed in the Catalogue of Federal Domestic Assistance under 10.500, Cooperative Extension Service; 10.511, Smith-Lever Funding; 10.512, Agriculture Extension at 1890 Land-grant Institutions, and 10.205, Payments to 1890 Land-Grant Colleges and Tuskegee University Evans-Allen Research and/or Agricultural Research at 1890 Land-grant institutions, including Tuskegee University, West Virginia State University, and Central State University; and 10.203, Payments to Agricultural Experiment Stations Under the Hatch Act (The Hatch Act of 1887).

Paperwork Reduction Act

The Department certifies that this final rule has been assessed in accordance with the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq. The Department concludes that this rule does not impose any new information collection requirements or change the burden estimate on existing information collection requirements. In addition to the SF-424 form families (i.e., Research and Related and Mandatory) and

the SF-425 Federal Financial Report (FFR) No. 0348-0061, NIFA has three currently approved OMB information collections associated with this rulemaking: OMB Information Collection No. 0524-0042, NIFA REEport; No. 0524-0041, NIFA Application Review Process; and No. 0524-0026, Organizational Information.

Unfunded Mandates Reform Act of 1995 and Executive Order

13132

The Department has reviewed this final rule in accordance with the requirements of Executive Order No. 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 et seq., and has found no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local, or tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Clarity of This Regulation

Executive Order 12866 and the President's Memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this rule easier to understand.

List of Subjects in 7 CFR Part 3419

1890 land-grant institutions, Agricultural extension, Agricultural research, Grant programs-agriculture, Insular areas, Land-grant institutions, Matching funds.

For the reasons discussed in the preamble, the Department of Agriculture, National Institute of Food and Agriculture, amends 7 CFR part 3419 as follows:

PART 3419—MATCHING FUNDS REQUIREMENT FOR AGRICULTURAL RESEARCH AND EXTENSION CAPACITY FUNDS AT 1890 LAND-GRANT INSTITUTIONS, INCLUDING CENTRAL STATE UNIVERSITY, TUSKEGEE UNIVERSITY, AND WEST VIRGINIA STATE UNIVERSITY AND AT 1862 LAND-GRANT INSTITUTIONS IN INSULAR AREAS

1. The authority citation for part 3419 is revised to read as follows:

Authority: 7 U.S.C. 3222d; 7 U.S.C. 343(e); 7 U.S.C. 361c; Pub. L. 107-171; Pub. L. 110-234; Pub. L. 113-79.

2. Revise the heading of part 3419 to read as set forth above.

3. Amend § 3419.1 as follows:

- a. Add a definition for "Capacity funds" in alphabetical order;
- b. Revise the definition of "Eligible institution";
- c. Remove the definition of "Formula funds";
- d. Revise the definition of "Matching funds"; and

e. Remove the definition of "Qualifying educational activities".

The addition and revision read as follows:

§ 3419.1 Definitions.

* * * * *

Capacity funds means agricultural extension and research funds provided by formula to the eligible institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended, or under sections 3(b) and (c) of the Smith-Lever Act, 7 U.S.C. 343(b) and (c) or under section 3 of the Hatch Act of 1887, 7 U.S.C. 361c.

Eligible institution means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 et seq.) (commonly known as the Second Morrill Act), including Central State University, Tuskegee University, and West Virginia State University (1890 land-grant institutions), and a college or university designated under the Act of July 2, 1862 (7 U.S.C. 301, et seq.) (commonly known as the First Morrill Act) and located in the Commonwealth of Puerto Rico and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the U.S. Virgin Islands (1862 land-grant institutions in insular areas).

Matching funds means funds from non-Federal sources, including those made available by the State to the eligible institutions, for programs or activities that fall within the purposes of agricultural research and cooperative extension under: sections 1444 and 1445 of NARETPA; the Hatch Act of 1887; and the Smith-Lever Act.

* * * * *

4. Amend § 3419.2 as follows:

- a. Revise the section heading;
- b. Remove the introductory text; and
- c. Revise paragraphs (a) and (b).

The revisions read as follows:

§ 3419.2 Matching funds requirement.

(a) 1890 land-grant institutions. The distribution of capacity funds are subject to a matching requirement. Matching funds will equal not less than 100% of the capacity funds to be distributed to the institution.

(b) 1862 land-grant institutions in insular areas. The distribution of capacity funds are subject to a matching requirement. Matching funds will equal not less than 50% of the capacity funds to be distributed to the institution.

* * * * *

§ 3419.3 [Removed]

5. Remove § 3419.3.

6. Redesignate § 3419.4 as § 3419.3 and revise newly designated § 3419.3 to read as follows:

§ 3419.3 Limited waiver authority.

(a) 1890 land-grant institutions: The Secretary may waive the matching funds requirement in § 3419.2 above the 50% level for any fiscal year for an eligible institution of a State if the Secretary determines that the State will be unlikely to satisfy the matching requirement.

(b) 1862 land-grant institutions in insular areas: The Secretary may waive up to 100% of the matching funds requirements in § 3419.2 for any fiscal year for an eligible institution in an insular area.

(c) The criteria to waive the applicable matching requirement for 1890 land-grant institutions and 1862 land-grant institutions in insular areas is demonstration of one or more of the following:

(1) Impacts from natural disaster, flood, fire, tornado, hurricane, or drought;

(2) State and/or institution facing a financial crisis; or

(3) Lack of matching funds after demonstration of good faith efforts to obtain funds.

(d) Approval or disapproval of the request for a waiver will be based on the application submitted, as defined under § 3419.4.

7. Add a new § 3419.4 to read as follows:

§ 3419.4 Applications for waivers for both 1890 land-grant institutions and 1862 land-grant institutions in insular areas.

Application for waivers for both 1890 land-grant institutions and 1862 land-grant institutions in insular areas. The president of the eligible institution must submit any request for a waiver for matching requirements. A waiver application must include the name of the eligible institution, the type of Federal capacity funds (i.e. research, extension, Hatch, etc.), appropriate fiscal year, the basis for the request (e.g. one or more of the criteria identified in § 3419.3); current supporting documentation, where current is defined as within the past two years from the date of the letter requesting the waiver; and the amount of the request.

§ 3419.5 [Amended]

8. Amend § 3419.5 by removing the word "formula" and adding, in its place, the word "capacity".

9. Revise § 3419.6 to read as follows:

§ 3419.6 Use of matching funds.

The required matching funds for the capacity programs must be used by an eligible institution for the same purpose as Federal award dollars: agricultural research and extension activities that have been approved in the plan of work required under sections 1445(c) and 1444(d) of the National Agricultural

Research, Extension, and Teaching Policy Act of 1977, section 7 of the Hatch Act of 1887, and section 4 of the Smith-Lever Act. For all programs, tuition dollars and student fees may not be used as matching funds.

10. Redesignate § 3419.7 as § 3419.8 and revise newly redesignated § 3419.8 to read as follows:

§ 3419.8 Redistribution of funds.

Unmatched research and extension funds will be reapportioned in accordance with the research and extension statutory distribution formulas applicable to the 1890 and 1862 land-grant institutions in insular areas, respectively. Any redistribution of funds must be subject to the same matching requirement under § 3419.2.

11. Add a new § 3419.7 to read as follows:

§ 3419.7 Reporting of matching funds.

Institutions will report all capacity matching funds expended annually using Standard Form (SF) 425, in accordance with 7 CFR 3430.56(a).

Done at Washington, D.C., this 7th day of May, 2018.

Meryl Broussard
Associate Director for Programs
National Institute of Food and Agriculture

